



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0096; Notice 1]

Hercules Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Hercules Tire & Rubber Company, (Hercules), has determined that certain Hercules Power ST2 radial trailer tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles*. Hercules filed an original noncompliance report dated December 9, 2021, and amended the report on December 14, 2021, and March 9, 2022. Hercules petitioned NHTSA on December 16, 2021, and amended the petition on March 9, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Hercules's petition.

DATES: Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655-0547.

SUPPLEMENTARY INFORMATION:

I. Overview: Hercules determined that certain Hercules Power ST2 radial trailer tires do not fully comply with the requirements of paragraph S6.5(b) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles* (49 CFR 571.119).

Hercules filed an original noncompliance report dated December 9, 2021, and amended the report on December 14, 2021, and March 9, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Hercules petitioned NHTSA on December 16, 2021, and amended its petition on March 9, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Hercules's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 67 Hercules Power ST2 size ST205/75R15 radial trailer tires, manufactured between November 23, 2020, and November 29, 2020, are potentially involved:

III. Noncompliance: Hercules explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with the second and third numerical symbols in the date code are transposed and therefore, do not meet the requirements of paragraph

S6.5(b) of FMVSS No. 139. Specifically, the TIN on the subject tires incorrectly states the date code as “4280,” when it should state “4820.”

IV. Rule Requirements: Paragraph S6.5(b) of FMVSS No. 119 and Part 574.5(b)(3) include the requirements relevant to this petition. FMVSS No. 119 states the TIN must meet the requirements set forth in Part 574. Part 574.5(b)(3), states that the date code portion of the TIN must identify the week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using “01” for the first full calendar week in each year, “02” for the second full calendar week, and so on. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture.

V. Summary of Hercules’s Petition: The following views and arguments presented in this section, “V. Summary of Hercules’s Petition,” are the views and arguments provided by Hercules. They have not been evaluated by the Agency and do not reflect the views of the Agency. Hercules describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Hercules explains that the subject noncompliance does not result in an increased risk to safety because the incorrect date code (“4280”) indicates that the subject tires were manufactured in the 42nd week of either 1980 or 2080. According to Hercules, “[t]he only years that a year code of 80 could potentially relate to are 1980, over 40 years ago, or 2080, which is so far into the future to be implausible.” Hercules claims the subject noncompliance would not cause a consumer to use the tire beyond its recommended maximum service life because a “consumer would not simply assume that the year code listed on the tire is in fact the correct date and be misled.” Hercules says that if a consumer did follow the date code listed on the subject tires, “the guidance provided on NHTSA’s website,” informs consumers that “tires should be replaced within six to 10 years regardless of treadwear.” In addition, because the year the date code indicates is implausible if a dealer were to store the subject tires for multiple years before selling them, Hercules believes “there is no risk of misleading the consumer about the age of the tire.”

Hercules says that while the second and third symbols in the date code were transposed in the TIN, “all other content within the TIN is accurate and the tires otherwise conform to the performance requirements applicable to specialty trailer tires.” Hercules states that the subject noncompliance “affects only the single week of tire production and the condition has been corrected in production.”

Hercules states that granting its petition would be consistent with similar decisions that NHTSA has previously granted for inconsequentiality. Hercules cited the following prior petitions that NHTSA has granted, and that Hercules believes support the granting of its petition:

- Bridgestone Firestone North America Tire, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 4396 (January 26, 2006);
- Bridgestone/Firestone, Inc., Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety, 66 FR 45076 (August 27, 2001).

Hercules believes that NHTSA’s primary concern related to mislabeled or inaccurate TINs is the potential for adverse safety consequences due to consumers using aged tires that are beyond the manufacturer’s recommended service life and regardless of the service condition of the tire. *See Cooper Tire & Rubber Company*, 86 FR 47726 (August 26, 2021).

In the event of a recall, Hercules says that it has taken steps so that it would be able to identify the subject tires and notify consumers. Hercules believes that this further supports the granting of its petition because it says NHTSA has stated in prior grants of inconsequentiality petitions that the purpose of a date code is to identify the tire so that, if necessary, the appropriate action can be taken in the interest of public safety – such as a safety recall notice. Hercules says that consumers will be able to register the tire with the noncompliant TIN and Hercules’s database will identify the tire “as having been produced in calendar week 48, calendar year 2020.” If necessary for a recall, Hercules says it would be able to contact consumers and include the TIN “as it is listed on the tire sidewall so that consumers could check the recall notification against the tire sidewall for verification purposes.

Hercules concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Hercules no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after tires notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III

Director,

Office of Vehicle Safety Compliance.

[FR Doc. 2022-17131 Filed: 8/9/2022 8:45 am; Publication Date: 8/10/2022]